



**SERVICES AGREEMENT  
TERMS & CONDITIONS**

**THIS AGREEMENT GOVERNS CLIENT'S ACCESS TO AND USE OF THE FLEXPAY™ SERVICES. PORTIONS OF THE SERVICES ARE PROTECTED UNDER COPYRIGHT, TRADE SECRET, AND OTHER INTELLECTUAL PROPERTY RIGHTS. THE SERVICES ARE LICENSED, NOT SOLD, TO CLIENT. CLIENT MUST READ THIS AGREEMENT CAREFULLY BEFORE ACCESSING OR ACCEPTING ANY OF THE FLEXPAY™ SERVICES. IF CLIENT IS NOT WILLING TO AGREE TO THE TERMS AND CONDITIONS OF THIS SERVICE AGREEMENT ("AGREEMENT"), CLIENT MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE OR ACCESS THE SERVICES.**

BY ACCEPTING THIS AGREEMENT, EITHER BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT OR BY CLICKING A BOX INDICATING ACCEPTANCE, CLIENT AGREES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF CLIENT ENTERS INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, CLIENT REPRESENTS THAT CLIENT HAS THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THE TERMS AND CONDITIONS OUTLINED IN THIS AGREEMENT. THE TERM "CLIENT" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF CLIENT DOES NOT HAVE SUCH AUTHORITY, OR IF CLIENT DOES NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, CLIENT MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE OR ACCESS THE SERVICES.

**RECITALS**

A. **WHEREAS 7984391 CANADA INC.** a Canadian Federal Corporation doing business as "FlexPay" with its registered office at 410 Saint-Nicolas, Suite 007, in the city of Montreal, province of Quebec, H2Y 2P5, CANADA (hereinafter "FP") provides clients with electronic commerce services including, but not limited to, risk and profitability analysis and transaction management.

B. **WHEREAS** the Client desires FP to provide, and FP desires to provide to Client, certain services for the Business for the consideration and on the terms set forth in this Agreement.

## **AGREEMENT**

**NOW, THEREFORE**, the Parties agree as follows:

### **1. FP Obligations**

**1.1 FP Services.** Subject to Client's compliance with the terms and conditions of this Agreement, FP will provide Client with the FP Services outlined in the relevant Order Form and Documentation and access to the FlexPay Transaction system;

**1.2 FP Customer Support.** Throughout the Term, FP shall provide to Client the appropriate customer support in order to address any identified issues or inaccuracies within a reasonable delay.

### **2. Client Obligations.**

**2.1 Technical Requirements.** Throughout the Term, Client will:

- (a) initiate a real-time FlexPay Transaction through the FlexPay Transaction system;
- (b) provide FP with IS Updates for all FlexPay Transactions;
- (c) Submit a file which includes all Transactions in which Client desires FP to attempt to recover failed payments; and
- (d) Provide FP access to Merchant Processor accounts providing FP with access and the ability to process either a Sale or an Authorization Transaction on behalf of Merchant.

### **3. Invoices; Payment Terms; Taxes.**

**3.1 Invoices.** FP will invoice Client weekly for all Fees as outlined in the relevant Order Form in United States dollars. Invoices are generated on the first Business day of the week for the previous week.

**3.2 Payment Terms.** Client will pay the Fees to FP within the term specified in the Order Form following receipt of invoice, by credit card, wire, electronic funds transfer or ACH deposit, direct withdrawal or any other payment methods reasonably designated by FP. Client understands and agrees that if Client fails to timely pay any FP amount owed to FP under this Agreement, any Order Form or any invoice, then, without limiting FP's other rights and remedies, FP may immediately suspend provision of and shut off Client's access to and usage of the FP Services and may suspend all FP's obligations to Client until any and all past-due amounts are paid in full. Client agrees that FP is not responsible for any damages suffered by Client as a result of Client's inability to access the FP Services as a result of suspension for non-payment and Client waives any claims related to suspension of FP Services.

If any invoiced amount is not received by FP by the due date, then without limiting FP's rights or remedies, those amounts may accrue at interest at the lower of (a) 1.5% of the outstanding balance per month or (b) the maximum rate permitted by law. Further, in such instance, FP may accelerate all indebtedness of Client to FP to become immediately due and payable without further notice or demand, which is hereby expressly waived, and FP may condition future

renewals and Order Forms on payment terms shorter than those otherwise specified in this Agreement or the original Order Form.

**3.3 Taxes.** All federal, state, local, value-added, transfer, sales and use taxes arising out of this Agreement will be paid by the Party required to pay such taxes under applicable law. The Party that is required by applicable law to make the filings, reports or returns and to handle any audits or controversies with respect to any such taxes will do so, and the other Party will cooperate with respect thereto as necessary.

#### **4. Term; Termination.**

**4.1 Initial Term; Renewal.** The term of this Agreement commences on the Effective Date and continues until all subscriptions or orders have expired or have been terminated. The term of each subscription or order shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions and orders will automatically renew for additional periods equal to the expiring subscription or order term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 60 days before the end of the relevant subscription or order term.

**4.2 Default and Termination.** This Agreement may be terminated at any time as follows: (a) by a Party that has not materially breached or defaulted in the performance of its obligations under this Agreement upon sixty (60) days' written notice to the Party that has breached or defaulted in the performance of its obligations under this Agreement, unless such breaching or defaulting Party has cured or has substantially cured its breaches or defaults within such cure period; (b) immediately upon notice by either Party if the other Party makes a general assignment for the benefit of creditors, files a voluntary petition in bankruptcy or for reorganization or arrangement under the bankruptcy laws, or if a petition in bankruptcy is filed against the other Party, or if a receiver or trustee is appointed for all or any part of the property or assets of the other Party; (c) by a written agreement executed by the Parties; or (d) pursuant to the additional termination provisions in the relevant Order Form, if any.

**4.3 Effect of Termination.** If any Party terminates this Agreement pursuant to Section 4.2, all obligations of the Parties under this Agreement will terminate without liability of any Party to the other Party, except as follows: (a) the provisions of Section 4 and Appendix B will survive termination and remain in full force and effect in accordance with their terms; (b) if this Agreement is terminated because of a breach of this Agreement by the non-terminating Party, the terminating Party's right to pursue all legal remedies will survive such termination unimpaired; and (c) Client will promptly deliver to FP any Fees due and payable to FP and any other amounts owed to FP under this Agreement, which payment will be due and payable within thirty (30) Business Days after FP's submission to Client of an invoice for such Fees and other amounts.

**4.4 Cancellation Fee.** Client acknowledges and agrees that there will be significant initial integration costs related to the Services provided by FP to Client. Accordingly, if Client terminates before the end of the initial Term outlined in the Order Form, then Client shall pay to FP the early cancellation fee outlined in the relevant Order Form. If the Order Form contains no early cancellation fee, then, regardless of the reason for the termination, Client shall pay to FP as a cancellation fee an amount equal to that which is specified in the Order Form multiplied by the number of months remaining on the initial Term.

#### **5. Additional Provisions**

This agreement is subject to the additional provisions in Appendix A and Appendix B.

## Appendix A to Services Agreement Definitions

**Definitions.** In addition to the defined terms specified in the first paragraph, recitals and substantive provisions of this Agreement, the following terms have the meanings set forth below:

**“Authorized Vendors”** shall mean vendors and partners that are used or referred by FP as part of the FP Services, such as the Engaged Recovery Services, that are outside of FP’s direct organization and whose services, products, software, technology, or platforms are accessed, used, or engaged by Client or that are otherwise part of the FP Services.

**“Business Day”** shall mean and refer to any day other than Saturday, Sunday, or any dated designated as a banking holiday in the United States or Canada.

**“Cardholder Data”** shall mean a User’s individual credit or debit card cardholder name, number, expiration date, the Card Security Code/Card Verification Value/Card Validation Code/Card Authentication Value, or Card Identification Number/Card Authentication Value 2/Card Validation Code 2/Card Verification Value 2.

**“Certification”** shall mean and refer to the successful testing of the Client Data Collector and FlexPay Transaction implementations which shall be attested to in writing by a FP certification engineer.

**“Certification Date”** shall mean and refer to the date Certification is achieved.

**“Clean Failed Payment”** shall mean a failed payment that has yet to be retried outside of FP, is not a test transaction, which has been returned when requested during the recovery process and has been sent to FP in a timely manner following the initial failed payment.

**“Client”** means the individual, company or other legal entity, and its affiliates, that accepts this Agreement or which have signed any Order Form or who otherwise access or use the or Services.

**“Client Data Collector”** shall mean the process/tool for how FP receives Client’s data, typically a SFTP folder or other instrument for data collection.

**“Customer”** shall mean and refer to either the customer service caller or the merchant with whom Client has contracted to provide customer service, as appropriate.

**“Customer Communication”** shall mean and refer to the data exchanged between Client and a customer when a customer initiates a transaction, which may include Personal Data.

**“Documentation”** shall mean any written documentation provided to Client under an Order Form or by FP, including without limitation usage guides and policies, as updated from time to time.

**“Effective Date”** shall mean the date on which Client accepts this Agreement, whether such acceptance is accomplished by executing an Order Form that references this Agreement, by clicking an online box indicating acceptance, or any other

acknowledgment or method that indicates Client's acceptance of the terms and conditions of this Agreement.

**"Engaged Recovery Services"** shall mean and refer to active services to engage customers and others authorized by Client related to the FP Services whether offered or performed by FP or by Authorized Vendors or through FP's system or technology or the FP Services which attempts to contact, solicit, market to, or otherwise communicate with customers or others authorized by Client for Failed Payment Recovery products or services.

**"Estimated Recovery Rate"** shall mean FP's estimate of the dollars recovered to failed payment dollars using FP's recovery process.

**"Failed Payment Recovery"** shall mean and refer to FP's service which attempts to optimize the submission of Clean Failed Payments in an effort to minimize the occurrence of future failed payment responses.

**"Fees"** shall mean and refer to the fees specified on the relevant Order Form.

**"FlexPay Transaction"** shall mean and refer to a unique payment request on behalf of Client charging a consumer credit card. A FlexPay Transaction includes unlimited payment retries in the case that the initial request is declined.

**"FP Services"** shall mean the products, services or subscriptions that are ordered by Client under an Order Form, and made available by FP, including without limitation Failed Payment Recovery services, risk and profitability analysis and transaction management and any components described in the Documentation.

**"IS Update"** means updated transaction information transmitted by the Client to FP through the FlexPay Transaction system, which includes all required data elements.

**"Marketing Data"** shall mean and refer to customer lists, affiliate lists, channel partner relationships, or methods and strategies related to the marketing of Client's products or services.

**"Member Bank"** shall mean and refer to any member of the Card Associations that provides payment processing to Merchant.

**"Merchant Processor"** shall mean and refer to a bank, financial institution or company that provides Merchant with a Merchant Services' account for the processing of Merchant's Transactions.

**"Net Failed Payments Recovered"** shall mean and refer to the gross recovered transaction value less refunds on those transactions and a portion for chargebacks. The portion for chargebacks is based on an estimated chargeback rate as stipulated in this agreement multiplied by the gross recoveries less the refunds on those recoveries.

**"Order Form"** shall mean an ordering document or online order specifying the FP Services to be provided under this Agreement, including any addenda and supplements thereto. By entering into an Order Form, In the event of a discrepancy

between the provisions of this Agreement and any fully executed Order Form, the provisions of such Order Form shall prevail.

**"Party" and "Parties"** shall mean, individually or collectively, the parties to this Agreement and any Order Form, namely FP and the Client.

**"Personal Data"** means: (a) any personally identifiable information (including, without limitation, Cardholder Data) disclosed or otherwise provided to FP by Client pursuant to this Agreement that, if compromised, could result in identity theft, or (b) any more restrictive definition required by applicable law.

**"Recovery Floor"** shall mean the ratio of recovered dollars to all failed payment dollars from a recent and relevant period as recovered by Client using their own automated recovery process. The recency and relevance of the failed payment dollars shall be determined by FP and Client with the intention of establishing a statistically significant Recovery Floor.

**"Transaction"** means the sale of goods or services, for any of FP's products or services for which the customer issues payment through a Member Bank for processing and collection. Transaction also pertains to non-sale events, such as voids, declines, credits and refunds.

**Appendix B to Service Agreement  
Additional Clauses**

**1. Contractual Requirements.**

**1.1** Client represents, warrants, and covenants that Client shall obtain, from any customer initiating a transaction for which Client requests a FlexPay Transaction, all consents necessary for FP to access the pertinent Customer Communication to which customer is a party (each a "**Customer Consent**"). Client shall have sole control over, and be solely responsible for the legal adequacy of, the means used to obtain the Customer Consent.

**1.2 Availability of FP Services.** Subject to the terms and conditions of this Agreement, FP will use commercially reasonable efforts to provide access to FP's systems and technology related to the FP Services twenty-four (24) hours a day, seven (7) days a week throughout the term of this Agreement. Client recognizes that the FP Services may be unavailable from time to time for a number reasons, including, without limitation: (a) equipment malfunctions; (b) periodic maintenance procedures or repairs which FP may undertake from time to time; or (c) causes beyond the control of FP or which are not reasonably foreseeable by FP including, without limitation, interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion, or other failures (collectively, "**Downtime**"). Client understands and agrees that FP cannot assure the availability of the FP Services on a continuous or uninterrupted basis. Client further acknowledges and agrees that FP shall have no liability related to any issues or interruptions related to any Merchant Account.

**1.3** Client acknowledges that the Engaged Recovery Services and other parts of the FP Services may include access to, use of, or engagement with Authorized Vendors and/or their software, platforms, products, and/or services. Client authorizes FP to utilize Authorized Vendors and their related software, platforms, products and services for the Engaged Recovery Services and other authorized parts of the FP Services. Client recognizes that use of an Authorized Vendor's software, platform, product, or service may require a separate license, agreement, or authorization or Order Form. Client also acknowledges that there may be occasions where Client engages or contracts directly with an Authorized Vendor, which relationships shall be subject to FP's approval if any software, platform, product, or services is related to the FP Services or any part of FP's property, FP's Intellectual Property, or FP's Confidential Information.

Client shall be solely responsible for its access to, use of, and engagement with such Authorized Vendors and use of their software, platforms, products, and services, including without limitation to comply with all applicable documentation and applicable law (including export, data protection and privacy laws, and laws related to electronic messages) and to use commercially reasonable efforts to prevent unauthorized access to or use of any Authorized Vendor's software, platform, products, or services. Client shall not, directly or indirectly: (i) resell, rent, distribute, market, commercialize or otherwise transfer rights or usage to any Authorized Vendor's software, platform, product, or service or any modified version or derivative work thereof created by or for Client; (ii) attempt or knowingly permit or encourage others to attempt, to translate, decompile, decipher, disassemble, reverse engineer or otherwise decrypt or discover the source code or otherwise replicate the functionality of all or any portion of any Authorized Vendor's software, platform, product, or service; (iii) copy any features, functions, user interfaces, look and feel or graphics of any Authorized Vendor's software, platform, product, or service; (iv) send, store or spam unlawful, infringing, obscene or libelous material, or malicious code; (v) attempt to gain unauthorized access to, or disrupt the performance of any Authorized Vendor's software, platform, product, or service; (vi) use any property of any Authorized Vendor contained in or accessible through the Authorized Vendor's software, platform, product, or service for the purpose of building a competitive product or service; (vii) use any Authorized Vendor's software, platform, product, or

service, or permit it to be used, for the purposes of product benchmarking or other analysis or evaluation intended for publication, without FP's and the Authorized Vendor's prior written consent; (viii) modify, adapt, translate, or create derivative works based on any Authorized Vendor's software, platform, product, or service, or (ix) use in any manner in contravention of applicable law.

FP reserves the right to suspend the FP Services and access to, use of, or engagement with any Authorized Vendor or any Authorized Vendor's software, platform, product, or service immediately if FP, acting reasonably and in good faith, believe that Client has violated this Agreement, harm or damages has or will occur due to Client, or to continue to provide the FP Services constitutes or will constitute harm to Client, FP, an Authorized Vendor, or any third party.

## **2. Ownership.**

**2.1 FP Intellectual Property.** All ownership, interest and title in and to any and all patents, copyrights, trademarks, trade secrets, computer programs, related documentation, technology, know how, processes, and other intellectual property developed by FP (or its predecessor-in-interest) and provided in connection with FP's performance of the FP Services (collectively, the "**Intellectual Property**") remains the sole property of FP. Except for the limited rights granted in this Agreement to receive Reports, Client does not receive nor is granted any licenses or rights in the Intellectual Property whether by implication, estoppel, or otherwise. Client agrees that Client will not reverse-engineer, disassemble or decompile the Intellectual Property. Client will not give any third party, except Client's employees, access to the Intellectual Property without FP's prior written consent. No license to any FP Intellectual Property is granted.

**2.2 Authorized Vendor Intellectual Property.** All ownership, interest and title in and to any and all Intellectual Property developed by any Authorized Vendor and provided in connection with any Authorized Vendor's software, platform, product, or services remains the relevant Authorized Vendor's sole property. Client does not receive nor is granted any licenses or rights in any Authorized Vendor's Intellectual Property whether by implication, estoppel, or otherwise. Client agrees that Client will not reverse-engineer, disassemble or decompile any Authorized Vendor's Intellectual Property. Client will not give any third party, except Client's employees, access to any Authorized Vendor's Intellectual Property without prior written consent. No license to any Authorized Vendor's Intellectual Property is granted.

**2.3 Personal Data.** As between FP and Client, Client retains all ownership, interest, and title in and to the Personal Data. FP does not retain any human-readable account numbers. Personal Data submitted to FP by Client may be converted by FP to be used in providing the Services and for statistical and/or fraud prevention purposes. FP shall retain all ownership, interest, and title in and to all converted data. Without limiting the foregoing, Client consents to the disclosure by FP of certain personal information concerning Client and its affiliates and users, namely personal identities, including name, address, and telephone number, if and as required by law.

**2.4 Marketing Data.** As between FP and Client, Client retains all ownership, interest, and title in and to the Marketing Data. Subject to Section 7, FP shall not divulge, sell, share, or otherwise make available any Marketing Data to any third party.



### 3. Warranties.

**3.1 FP General Warranty.** FP warrants to Client that: (a) FP will perform the FP Services in a commercially reasonable manner; and (b) the FP Services will conform substantially to the provisions of this Agreement. FP's sole liability, and Client's sole remedy, in the event of any breach of the warranty contained in this Section will be for Client to terminate this Agreement and cease using the FP Services.

**3.2 Client Warranty.** Client represents and warrants to FP that:

(a) Client has the power and authority to enter into and perform its obligations under this Agreement;

(b) Client has and will have for the term of this Agreement the right to provide the Customer Communication, including all Personal Data contained therein, and has obtained each Customer's Consent to the provision of such Customer Communication to FP pursuant to Section 3.2; and

(c) Client has and will comply with all applicable laws and regulations, including without limitation, federal and state laws and regulations relating to electronic messaging, telephone and text advertising, marketing, and solicitation communications such as the Telephone Consumer Protection Act, all rules, standards, and security requirements of the PCI Security Standards Council and any credit or debit card provider, gift card provider, or other stored value and loyalty program card provider, including, but not limited to, American Express, Visa, U.S.A., Inc., MasterCard International, Inc., Discover Financial Services, LLC, and JCB International, the PCI-DSS and all laws relating to the collection, processing, sharing and disclosure of Personal Data (including, without limitation, in the United States and the European Union) (collectively, the "**Security Requirements**") and provides all relevant notices and obtains all necessary consents from its customers to the disclosure of Personal Data to FP (including, where relevant, the transfer of such Personal Data to the United States), and FP's use of such Personal Data in accordance with the terms of this Agreement;

(d) Client will not disclose or otherwise provide any customer Personal Data to FP unless it has obtained consent from each such customer in accordance with (c) above, and

(e) Client is solely responsible for the privacy and security of any and all Cardholder Data that Client at any time accesses, stores, processes, transmits, or otherwise possesses.

(f) Client understands and knows how to comply with laws and rules related to electronic messaging, telephone and text advertising, marketing, and solicitation communications such as the Telephone Consumer Protection Act and related laws and issues.

**3.3 Disclaimer of Warranty.** EXCEPT AS EXPRESSLY STATED IN THIS SECTION, THE FP SERVICES, INCLUDING ENGAGED RECOVERY SERVICES AND ANY AUTHORIZED VENDOR'S SOFTWARE, PLATFORM, PRODUCTS, AND SERVICES ARE PROVIDED "AS-IS" AND "AS AVAILABLE" AND THE PARTIES HEREBY DISCLAIM AND NEITHER FP NOR CLIENT MAKES ANY WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANT ABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INTERRUPTION, AVAILABILITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR TITLE CONCERNING ANY SUBJECT MATTER OF THIS AGREEMENT. ALL AUTHORIZED VENDOR OR THIRD-PARTY

MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

#### **4. PCI DSS Compliance.**

##### **4.1** FP agrees and acknowledges:

(a) that it shall comply with all applicable data protection laws and provide for the security of cardholder data that it possesses, including the functions relating to storing, processing, and transmitting of the cardholder data up to PCI DSS standards;

(b) to supply the current status of FP's PCI DSS compliance status, and evidence of its most recent validation of compliance upon request;

(c) that it will supply a new status report and evidence of validation of compliance at least annually;

(d) that it will immediately notify if it learns that it is no longer PCI DSS compliant and will immediately provide the client the steps being taken to remediate the non-compliance status; and

Client acknowledges and agrees that FP shall not be required to provide additional data security beyond that required by PCI DSS; Client further acknowledges and agrees that FP shall bear no liability related any data security breach if FP can show PCI DSS compliance at the time of any alleged event or breach.

**4.2** For its part, Client acknowledges and agrees that it shall comply with all applicable data protections laws, including those regarding the data protection laws contained in the Documentation and shall refrain from any action or inaction that could cause FP or its affiliates to breach any applicable data protection law.

#### **5. Indemnification.**

**5.1 By Client.** Client agrees to indemnify, hold harmless, and defend FP and its current and former directors, officers, employees, affiliates, and agents (the "Released Parties") from and against any action, claim, demand, suit, proceeding dispute, or liability, including reasonable attorneys' fees and costs, arising from or relating to: (a) any breach by Client of any representation, warranty, covenant or obligation of Client hereunder, (b) any negligence or willful misconduct of Client; and (c) any Authorized Vendor's software, platform, products, or services and any Engaged Recovery Services, including without limitation marketing, advertising, soliciting, and communications, whether by FP or any Authorized Vendors. Client agrees that FP will have the right to participate, at its expense, in the defense of any such claim through counsel of its own choosing.

Client will, at its expense: (i) defend or settle any third-party claims, actions and demands brought against any Authorized Vendor or its affiliates, officers, directors, employees and agents; and (ii) pay all damages awarded therein against the Authorized Vendor indemnified parties or agreed upon in a settlement by Client (including other reasonable costs and legal fees incurred by the Authorized Vendor or its affiliates in connection with enforcing this paragraph) arising from: (A) Client's breach or violation of the licenses, responsibilities and restrictions set out in this Agreement or any license, agreement, or understanding with such Authorized Vendor; (B) claims

that Client Data or any Authorized Vendor's transmission, usage, or hosting of Client Data infringes or violates the rights of a third-party; (C) claims of a third-party related to a violation by Client of this Agreement; or (D) claims that Client failed to comply with applicable laws in its performance of this Agreement.

**5.2 By FP.** FP agrees to indemnify, hold harmless, and defend Client from and against any action, claim, demand, suit, proceeding dispute, or liability, including reasonable attorneys' fees and costs, arising from or relating to: (a) any breach by FP of any representation, warranty, covenant or obligation of FP hereunder, or (b) any negligence or willful misconduct of FP. FP agrees that Client will have the right to participate, at its expense, in the defense of any such claim through counsel of its own choosing.

**5.3 Procedure.** The obligations of either Party to provide indemnification under this Agreement shall be contingent upon the Party seeking indemnification: (a) providing the indemnifying Party with prompt written notice of any claim for which indemnification is sought; (b) cooperating fully with the indemnifying Party (at the indemnifying Party's expense); and (c) allowing the indemnifying Party to control the defense and settlement of such claim.

**5.4 Insurance.** If Client desires FP or any Authorized Vendors to provide Engaged Recovery Services or any products or services that involve Authorized Vendors, FP may require Client to obtain coverage against Telephone Consumer Protection Act and similar claims related to electronic messaging, telephone, and text advertising, marketing, and solicitation communications.

**6. Limitation of Liability.** EXCEPT FOR ANY INDEMNIFICATION OBLIGATIONS HEREUNDER, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT OR GOODWILL, FOR ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S TOTAL LIABILITY FOR ANY AND ALL DAMAGES ARISING UNDER THIS AGREEMENT WILL BE LIMITED TO AN AMOUNT NOT TO EXCEED THE TOTAL FEES PAID BY CLIENT TO FP HEREUNDER FOR THE ONE (1) YEAR PERIOD PRIOR TO ANY ACT OR OMISSION GIVING RISE TO ANY POTENTIAL LIABILITY.

NOTWITHSTANDING THE LIMITATION OF LIABILITY IN SECTION, THE LIMITATION OF LIABILITY SHALL NOT APPLY TO LIMIT CLAIMS ARISING FROM: (I) CLIENT'S BREACH OF THIS AGREEMENT AS IT RELATES TO ANY AUTHORIZED VENDOR OR THE RELATED LICENSES, RESPONSIBILITIES AND RESTRICTIONS SET OUT IN THEIR RELATIONSHIP WITH ANY AUTHORIZED VENDOR; (II) CLIENT'S PAYMENT OBLIGATIONS; (III) FRAUD; (IV) GROSS NEGLIGENCE; (V) WILLFUL MISCONDUCT; OR (VI) THE INDEMNIFICATION OBLIGATIONS.

## **7. Confidentiality.**

**7.1 Client Confidential Information.** Client may provide to FP certain confidential, proprietary, and trade secret business or technical information of Client or other persons in connection with FP's performance of the FP Services ("**Client Confidential Information**"). Client Confidential Information will be clearly marked and designated as confidential; provided, however, that Client Confidential Information will not include any information that FP can establish: (a) was, at the time of disclosure, generally available to the public through no fault of FP; (b) was in FP's

possession on the Effective Date and was not obtained from Client; or (c) was lawfully received from a third party who rightfully acquired it and did not obtain it in violation of any confidentiality agreement. FP agrees to preserve the confidentiality of all Client Confidential Information that is provided by Client in connection with the Agreement, and will not disclose or make available to any person outside of FP's organization and Authorized Vendors, or use for its own or any other person's benefit, other than as necessary in performance of its obligations under this Agreement, any Client Confidential Information, unless such action: (1) is required by law or regulation, but only to the extent and for the purposes of such law or regulation; (2) is in response to a valid order of a court or other governmental body but only to the extent of and for the purposes of such order, and only if FP first notifies Client of the order and permits Client to seek an appropriate protective order; or (3) is with written permission of Client and in compliance with any terms or conditions set by Client regarding such disclosure. FP will exercise a commercially reasonable level of care to safeguard Client Confidential Information against improper disclosure or use. FP acknowledges and agrees that the Personal Data is Client Confidential Information.

**7.2 FP Confidential Information.** FP may provide to Client certain confidential, proprietary, and trade secret business or technical information of FP or other persons in connection with FP's performance of the FP Services ("**FP Confidential Information**"). FP Confidential Information will be clearly marked and designated as confidential; provided, however, that FP Confidential Information will not include any information that Client can establish: (a) was, at the time of disclosure, generally available to the public through no fault of Client; (b) was in Client's possession on the Effective Date and was not obtained from FP; or (c) was lawfully received from a third party who rightfully acquired it and did not obtain it in violation of any confidentiality agreement. Client agrees to preserve the confidentiality of all FP Confidential Information that is provided by FP in connection with this Agreement, and will not disclose or make available to any person, or use for its own or any other person's benefit, other than as necessary in performance of its obligations under this Agreement, any FP Confidential Information, unless such action: (1) is required by law or regulation, but only to the extent and for the purposes of such law or regulation; (2) is in response to a valid order of a court or other governmental body but only to the extent of and for the purposes of such order, and only if Client first notifies FP of the order and permits FP to seek an appropriate protective order; or (3) is with written permission of FP and in compliance with any terms or conditions set by FP regarding such disclosure. Client will exercise a commercially reasonable level of care to safeguard FP Confidential Information against improper disclosure or use.

**7.3 Authorized Vendor, Third Party CRM and FP Confidential Information.** Client acknowledges and agrees that Authorized Vendors and third party CRM may provide to FP certain confidential, proprietary, and trade secret business or technical information of Client or other persons in connection with FP's performance of the FP Services ("**Client Confidential Information**"). Client Confidential Information will be clearly marked and designated as confidential; provided, however, that Client Confidential Information will not include any information that FP can establish: (a) was, at the time of disclosure, generally available to the public through no fault of TFP; (b) was in FP's possession on the Effective Date and was not obtained from Client; or (c) was lawfully received from any Authorized Vendor or third party CRM who rightfully acquired it and did not obtain it in violation of any confidentiality agreement. FP agrees to preserve the confidentiality of all Client Confidential Information that is provided by any Authorized Vendor or Client in connection with the Agreement, and will not disclose or make available to any person, or use for its own or any other person's benefit, other than as necessary in performance of its obligations under this Agreement, any Client Confidential Information, unless such action: (1) is required by law or regulation, but only to the extent and for the purposes of such law or regulation; (2) is in response to a valid order of a court or other governmental body but only to the extent of and for the purposes of such order, and only if FP first notifies Client of

the order and permits Client to seek an appropriate protective order; or (3) is with written permission of Client and in compliance with any terms or conditions set by Client regarding such disclosure. FP will exercise a commercially reasonable level of care to safeguard Client Confidential Information against improper disclosure or use. FP acknowledges and agrees that the Personal Data is Client Confidential Information.

**7.4 Return of Materials.** Upon the request of Client, and upon any termination or expiration of this Agreement, FP will return all Client Confidential Information to Client and erase and remove all copies of all Client Confidential Information from any computer equipment and media in FP's possession, custody, or control, except for Cardholder Data which has been converted as provided for in Section 5.2. Upon the request of FP, and upon any termination or expiration of this Agreement, Client will return all FP Confidential Information and any other Intellectual Property to FP and erase and remove all copies of all FP Confidential Information and any other Intellectual Property from any computer equipment and media in Client's possession, custody or control.

**7.5 Security Breach.** In the event of any unauthorized disclosure of Cardholder Data, or any unauthorized intrusion, penetration, or security breach involving Client's systems or facilities (each, a "**Security Breach**"), Client shall (a) immediately notify FP in writing of any Security Breach and furnish FP with the full details of whether such Security Breach involved Cardholder Data that had been previously provided to FP as part of a CRM Transaction; and (b) promptly repair and/or remedy the causes of such Security Breach and deliver written notice of such remedy to FP. Provision of the FP Services shall be suspended immediately upon FP's receipt of notification of a Security Breach and shall not be reinstated until Client provides written notice that the causes of such Security Breach have been remedied. In addition to any other indemnification obligation of Client set forth in this Agreement, Client shall indemnify, defend, and hold harmless FP, its affiliates, and its and their respective officers, directors, employees, representatives, agents, licensors, attorneys, heirs, successors, and assigns, from and against any costs, claims, losses, judgments, liabilities, and damages, and all related expenses (including reasonable legal fees, court costs, and disbursements and costs of investigation, litigation, settlement, judgment, interest, fines and penalties) (collectively, "**Losses**"), to the extent such Losses arise out of or in connection with (1) a Security Breach, or (2) Client's failure to notify FP of a Security Breach. FP will have no liability to Client for any failure or deficiency on the part of Client that results in Cardholder Data being disclosed, corrupted, or otherwise compromised.

**7.6 Mutual Promotion.** It is understood that either party in this agreement may issue a press release (joint or otherwise) announcing the execution of this Agreement. The parties agree to consult with each other reasonably and in good faith with respect to the text and timing of such press releases prior to the issuance thereof, provided that a party may not unreasonably withhold consent to such releases. Each party agrees to review each press release within forty-eight (48) hours after receiving the press release from the other party. In addition, following the initial press release announcing this Agreement, either party shall be free to disclose, without the other party's prior written consent, the existence of this Agreement, the identity of the other party and those terms of this Agreement that have already been publicly disclosed in accordance herewith.

## **8. Optimizations to Submission Strings**

In making every effort to recover client's customers, FP may, from time to time, modify the transaction request string. Client understands and agrees that this may include, but is not limited to, modifying any fields in the transaction being submitted to the gateway, at FP's discretion. Should a Client mandate that no changes are permitted, the Client must notify FP in writing 30 days before this change is to take effect.

## 9. General Provisions.

**9.1 Independent Contractors; No Third-Party Beneficiary.** The Parties and their respective personnel are and will be independent contractors and neither Party by virtue of this Agreement will have any right, power or authority to act or create any obligation, express or implied, on behalf of the other Party. This Agreement is for the benefit of the Parties only, and there are no third-party beneficiaries of this Agreement.

**9.2 Assignment.** Neither Party may assign any of its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, without the consent of the other Party; provided, however, that either Party may assign this Agreement to a successor of that Party as a result of a merger, reorganization or sale of all or substantially all of the assets to which this Agreement pertains. Any attempted assignment in violation of the foregoing is void and will be a material breach of this Agreement. Subject to the foregoing, this Agreement is binding upon and will inure to the benefit of the Parties' respective successors, heirs and assigns. Notwithstanding the provisions of this Section 8.2, FP may, at its sole and unfettered discretion, assign any of its rights, duties or obligations under this Agreement to any person or entity for any reason whatsoever including but not limited to as a result of a merger, reorganization or sale of all or substantially all of the assets to which this Agreement pertains.

**9.3 Force Majeure.** Neither Party is responsible for delays or failures in performance (other than payment) resulting from acts of God, strikes, lockouts, riots, acts of war and terrorism, embargoes, changes in governmental regulations, epidemics, fire, communication line failures, power failures, earthquakes, and other disasters beyond the reasonable control of such Party (each, a "**Force Majeure**"). If a claim by a Party for release of its obligations under this Section exceeds sixty (60) days, then the other Party has the right to terminate this Agreement without penalty of any kind. Neither Party is entitled to relief under this Section to the extent that any event otherwise constituting an event of Force Majeure results from the negligence or fault of such Party or its employees or agents.

**9.4 Waiver.** No waiver of any provision hereof or of any right or remedy hereunder will be effective unless in writing and signed by the Party against which such waiver is sought to be enforced. No delay in exercising, no course of dealing with respect to, or no partial exercise of any right or remedy hereunder will constitute a waiver of any other right or remedy, or future exercise thereof.

**9.5 Severability.** If any provision of this Agreement is determined to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the Agreement will remain enforceable.

**9.6 Notice.** All notices will be in writing and will be deemed to be delivered when received by certified mail, postage prepaid, return receipt requested, or when sent by facsimile with machine-generated confirmation of transmission without notation of error. All notices will be directed to the Parties at the respective addresses or facsimile numbers given below or to such other address or facsimile number as either Party may, from time to time, designate by notice to the other Party.

**9.7 Amendment.** No amendment, change, waiver, or discharge hereof will be valid unless in writing and signed by both Parties.

**9.8 Governing Law; Arbitration and Venue.** The interpretation, validity and enforcement of this Agreement, and all legal actions brought under or in connection with the subject matter of this Agreement, shall be governed by the law of the Province of Quebec (except that any conflicts-of-law principles of such state that would result in the application of the law of another jurisdiction shall be disregarded). Any legal action brought under or in connection with the subject matter of this Agreement or the relationship between the Parties or their owners, management, or agents, that cannot be resolved amicably, shall be submitted to binding arbitration in Montreal, Quebec, Canada, in accordance with the arbitration rules of the American Arbitration Association or of any similar organization that specializes in the arbitration of commercial business disputes. Client acknowledges and agrees that this venue is reasonable for purposes of uniformity and best meets the interest of FP's system. Any such arbitration shall be conducted by a single arbitrator. Judgement upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof; provided, however, that either Party may seek preliminary injunctive or other equitable relief pending arbitration to prevent irreparable harm. For the limited court proceedings authorized under this Agreement, each of the Parties irrevocably submits to the exclusive venue and jurisdiction of the Canadian federal courts or Quebec provincial courts located in Montreal, QC. Each Party submits to the exclusive jurisdiction of these courts and agrees not to commence any legal action under or in connection with the subject matter of this Agreement in any other court or forum.

The Parties waive, to the fullest extent permitted by law, any right to or claim for any punitive or exemplary damages against any other Party and agree that the Party making any claim directly or indirectly arising from or relating to this Agreement will be limited as outlined in this Agreement. Each Party shall bear its own costs and expenses and an equal share of the arbitrator's expenses and administrative fees of arbitration; however, the prevailing party in any legal action brought by one Party against the other and arising out of this Agreement or the Parties' relationship shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including arbitration or court costs and reasonable attorney's fees.

**9.9 Pre-Action Dispute Resolution and Mediation.** The Parties agree that they will use their best efforts to amicably resolve any disputes arising out of or relating to this Agreement by communication and negotiation. If a dispute arises between the Parties, before initiating any formal legal action or proceeding, the Parties shall first cause their primary decision makers to discuss the issue in good faith to attempt to resolve the dispute informally. If the dispute has not resolved by informal discussion, before initiating any formal legal action, the parties agree to participate in at least 6 hours of mediation in accordance with the mediation procedures of the American Arbitration Association or of any similar organization that specializes in the mediation of commercial franchise business disputes. The parties agree to equally share the costs of mediation.

**9.10 Counterparts.** This Agreement may be executed in any number of counterparts and each such executed counterpart will be deemed to be an original instrument, but all such executed counterparts together will constitute one and the same instrument.

**9.11 Further Assurances.** Each Party agrees at its own expense, to execute, acknowledge, and deliver any further documents and instruments reasonably requested by the other Party, and to take any other action consistent with the terms of this Agreement that may reasonably be requested by the other Party, for the purpose of consummating the transactions contemplated by this Agreement.

**9.12 Entire Agreement.** This Agreement, together with all Exhibits attached hereto, which are incorporated herein by reference, constitutes the complete and exclusive statement of

all mutual understandings between the Parties with respect to the subject matter hereof, superseding all prior or contemporaneous proposals, communications and understandings, oral or written.

FP shall have the right to reference this Agreement and the identity of the Client in any publicity or marketing campaign to promote its business. FP shall also have the right to make a public announcement/press release concerning the signing of this Agreement with Client so long as FP informs the Client of the contents of the announcement/press release proposed to be made. FP shall use its reasonable efforts to obtain Client's approval for the announcement/press release, which approval may not be unreasonably withheld. Once the content is approved the announcement/press release shall be on a joint basis unless the Client agrees otherwise.